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Bevilacqua Asphalt Corp. and International Brotherhood of Teamsters Local 251, AFL-CIO. Case 01-CA-245510

March 4, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Bevilacqua Asphalt Corp. (the Respondent) has failed to file an answer to the complaint. Upon a charge and amended charges filed by International Brotherhood of Teamsters Local 251, AFL-CIO (the Union) on July 25, October 9 and 22, 2019, respectively, the General Counsel issued a complaint and notice of hearing on October 28, 2019, against the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On December 26, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on January 3, 2020, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by November 8, 2019, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 12, 2019, advised the Respondent that unless an answer was received by December 18, 2019, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer. Moreover, the General Counsel's motion discloses that on a conference call on December 20, 2019, the Respondent's counsel stated that the Respondent will not file an answer in this matter.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the

complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office located at 1045 Quaker Highway, Uxbridge, Massachusetts (office) and a plant and quarry located at 586 Quaker Highway, Uxbridge, Massachusetts (plant), the office and the plant collectively referred to as the Uxbridge facility, has been engaged in the business of asphalt manufacturing and related sales.

Annually, the Respondent, in conducting its operations described above, purchases and receives at its Uxbridge facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Steven Bevilacqua	-	President and Owner
Nicholas Bevilacqua	-	Quality Control
Roland Noury	-	Plant Operator

The following events occurred, giving rise to these proceedings

1. From about mid-May through December 2016, the Respondent's employee Daniel Hedquist engaged in union activities, including activities in furtherance of an organizing drive at the Respondent's facility among the Respondent's employee drivers.

2. About July 25, 2019, the Respondent, by Steven Bevilacqua, barred former driver employee Daniel Hedquist from the Respondent's plant.

3. The Respondent engaged in the conduct described above in paragraph 2 because Daniel Hedquist engaged in the conduct described above in paragraph 1, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7

of the Act in violation of Section 8(a)(1) of the Act, and has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.¹

ORDER

The National Labor Relations Board orders that the Respondent, Bevilacqua Asphalt Corp., Uxbridge, Massachusetts, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Barring former employees from its plant because they engaged in union activities, including activities in furtherance of an organizing drive at the Respondent's facility, and to discourage employees from engaging in these activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Uxbridge, Massachusetts, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper

notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 25, 2019.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 1 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 4, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

¹ In addition to the customary notice posting remedies, the General Counsel requests the additional remedy that the Respondent mail a copy of the notice to all full-time and regular part-time truck drivers currently employed or formerly employed by the Respondent at any time since December 1, 2016. We deny this request because the General Counsel has not shown that this additional measure is needed to remedy the effects of the Respondent's unfair labor practices. See *Environmental Contractors, Inc.*, 366 NLRB No. 41, slip op. at 4 fn. 6 (2018); *On Target Security, Inc.*, 362 NLRB No. 31, slip op. at 2 (2015); *First Legal Support Services, LLC*, 342 NLRB 350, 350 fn. 6 (2004).

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT bar former employees from our plant because they engaged in union activities, including activities in furtherance of an organizing drive at our facility among our employee drivers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

BEVILACQUA ASPHALT CORP.

The Board's decision can be found at www.nlr.gov/case/01-CA-245510 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

